



FH
[REDACTED]

**STATE OF WISCONSIN
Division of Hearings and Appeals**

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]

DECISION

LNO/170609

PRELIMINARY RECITALS

Pursuant to a petition filed November 30, 2015, under Wis. Admin. Code § DCF 201.07(1)(e), to review a decision by the Milwaukee Early Care Administration - MECA in regard to Other, a hearing was held on March 22, 2016, at Milwaukee, Wisconsin.

This case was originally scheduled for hearing on January 12, 2016. The Petitioner called and indicated that she needed to go into work because a co-worker was ill. A new hearing date was scheduled for January 26, 2016.

The Petitioner did not appear for the January 26, 2016 hearing and she did not contact the Division of Hearings and Appeals. So, on January 28, 2016, the appeal was dismissed as abandoned.

On February 16, 2016, the Petitioner filed a request for a new hearing, claiming that she didn't get the hearing notice, because she lost her home. Petitioner also stated that she was so busy, she just forgot about her hearing.

On February 24, 2016, the request for a new hearing was granted. The hearing was scheduled for March 22, 2016. It took place as scheduled.

The issue for determination is whether the Public Assistance Collections Unit (PACU) correctly implemented a warrant.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

Respondent:

Department of Children and Families
201 East Washington Avenue, Room G200
Madison, Wisconsin 53703

By: [REDACTED], Child Care Subsidy Specialist, Senior
Milwaukee Early Care Administration - MECA

Department of Children And Families
 1220 W. Vliet St. 2nd Floor, 200 East
 Milwaukee, WI 53205

ADMINISTRATIVE LAW JUDGE:
 Mayumi M. Ishii
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.
2. On June 30, 2014, the Milwaukee Early Care Administration (the agency) sent the Petitioner a manual Child Care (CC) Client Overpayment Notice and overpayment worksheets, indicating she was overpaid \$6,790.69 in benefits for the period of September 9, 2013 through June 30, 2014. (Exhibit 2)
3. On July 1, 2014, the agency sent the Petitioner an automated Child Care Overpayment Notice, advising her of the same overpayment. (Exhibit 3)
4. On July 13, 2014, the Petitioner filed an appeal of the overpayment. A hearing was scheduled for August 6, 2014. At the Petitioner's request, the hearing was rescheduled to August 19, 2014, because she had to work. The Petitioner did not show up for the August 19, 2014 hearing. Consequently, her appeal of the overpayment was dismissed as abandoned on August 20, 2014. (Exhibits 11 and 15; DHA file)
5. On September 3, 2014, the Public Assistance Collections Unit (PACU) sent the Petitioner a repayment agreement. (Exhibit 6)
6. Sometime between October 2, 2014 and October 20, 2014, the Petitioner returned the repayment agreement to the agency and agreed to pay \$25.00 per month toward the debt. (Exhibits 7 and 9)
7. The Petitioner made \$25.00 payments on October 20, 2014, November 18, 2014, January 26, 2015, February 26, 2015, March 31, 2015, May 13, 2015 and June 26, 2015. She made a \$20.00 on December 17, 2014. (Exhibit 9)
8. PACU sent the Petitioner a dunning notice on October 2, 2014, because she had not yet signed the repayment agreement, and because she had yet not made a payment. PACU sent the Petitioner a second dunning notice on January 5, 2015, because she did not make a full \$25.00 payment in December 2014; and it sent her a third dunning notice on May 4, 2015, when she missed a payment in April 2015. (Exhibits 7 and 9)
9. On August 14, 2015, PACU sent the Petitioner a notice of tax intercept, advising her that her State Tax refund would be intercepted to satisfy the overpayment. (Exhibit 8)
10. On August 24, 2015, the Petitioner filed an appeal of the tax intercept, and on December 8, 2015 a hearing took place. On February 25, 2016, the Division of Hearings and Appeals issued a decision, dismissing Petitioner's appeal, because the agency took the proper steps to implement the tax intercept. (Exhibit 15)
11. On November 22, 2015, PACU sent the Petitioner a Notice of Warrant Docketed in Milwaukee County. (Exhibit 13)
12. On December 2, 2015, the Petitioner filed an appeal stating, 'I would like to formally request a fair hearing in reference to # [REDACTED]. I would like to address questions in regards to prior payment issues'. The Petitioner attached a copy of the November 22, 2015 notice, to her appeal letter. (Exhibit 1)

DISCUSSION

Wis. Stats. §49.195(3) states that agencies, such as Milwaukee Early Care Administration (the agency), must determine when an overpayment in child care benefits has occurred and that it must, “promptly recover all overpayments”.

Wis. Stats. §49.195(3m)(a)1 further states, “If any person fails to pay the department any amount determined under sub.(3), no review or appeal of that determination is pending and the time for requesting review or taking an appeal has expired, the department may issue a warrant directed to the clerk of circuit court of any county.” The warrant is considered a “perfected lien upon the person’s right, title and interest in all real and personal property located in the county in which the warrant is entered.” Wis. Stats. §49.195(3m)(a)3.

Wis. Admin. Code §DCF 201.04(5)(eh)(1)(a) also states, “If the department does not receive a debtor's payment on a debt for repayment of an overpayment by the due date 3 times over the life of a debt, the debt shall be considered delinquent. If a debt is delinquent and no review or appeal rights under s. DCF 201.07 are pending and the time for requesting a review has expired, the department may issue a warrant directed to the clerk of circuit court of any county.”

Wisconsin Share Child Care Assistance Manual §3.7.2 (formerly §2.1.6.2) limits the use of warrants/liens to debts that exceed \$300.00.

Petitioner’s case satisfies all the aforementioned criteria. 1) Petitioner has not paid off the overpayment; 2) There was no appeal pending regarding the overpayment determination at the time the warrant was issued, 3) The time for requesting an appeal or review of the overpayment determination expired, 4) Petitioner failed to make three full payments, as evidenced by the three dunning notices; and 5) the balance of the debt exceeds \$300. Consequently, PACU had the authority to issue and correctly issued a warrant against Petitioner’s real and personal property.

At the hearing, the Petitioner indicated that her fundamental problem with the use of the warrant, was that she was given bad advice / misinformation from an agency worker in December 2014. The Petitioner testified that she inadvertently made a \$20.00 payment, instead of a \$25.00 payment. The Petitioner testified that she called the agency to see if she should or could make an additional \$5.00 payment, but was told at that time to “not worry about it”. So, Petitioner didn’t worry about it. The Petitioner argues that it is not fair to implement a warrant, when she missed a full payment because she relied on bad advice from an agency worker.

Petitioner raised this same argument in her appeal of the tax intercept. As discussed in the decision issued on February 25, 2016, Petitioner’s argument is equitable in nature, meaning it is based on what Petitioner believes is fair. An ALJ does not possess any equitable powers and cannot base a decision upon equity, but must instead, apply the law as it is written.¹ Here, the law requires that the use of the warrant be upheld, because the agency and PACU took the proper steps to implement a warrant.

¹ See, *Final Decision*, OAH Case No. A-40/44630, [by Timothy F. Cullen, Secretary, DHSS] Office of Administrative Hearings, n/k/a, Division of Hearings & Appeals- Work & Family Services Unit December 30, 1987)(DHSS); "An administrative agency has only those powers which are expressly conferred or can be fairly implied from the statutes under which it operates. [citation omitted]" *Oneida County v. Converse*, 180 Wis.2d 120, 125, 508 N.W.2d 416 (1993).

Even, if I could make a decision based in equity, I would not find in favor of the Respondent, because she still missed a payment in April 2015, and it was that missed payment, not the one in December 2014, that triggered the collections action.

Petitioner further asserts that she is unable to afford the collections actions taken by PACU. If the Petitioner is experiencing a financial hardship, she must negotiate directly with PACU. They can be reached at: 1-800-943-9499 or dwspacu@wisconsin.gov

CONCLUSIONS OF LAW

The Public Assistance Collections Unit (PACU) correctly issued a warrant against Petitioner's real and personal property to recoup a Child Care overpayment.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Children and Families, 201 East Washington Avenue, Room G200, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,
Wisconsin, this 24th day of March, 2016

\sMayumi M. Ishii
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
Suite 201
5005 University Avenue
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on March 24, 2016.

Milwaukee Early Care Administration - MECA
Public Assistance Collection Unit